

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

- - -

MELISSA BROWN, Plaintiff	:	CIVIL ACTION NO. 06-2034
	:	
	:	
v.	:	Philadelphia, Pennsylvania
NUTRITION MANAGEMENT	:	August 22, 2008
SERVICES CO., et al.,	:	9:32 o'clock a.m.
Defendants	:	
• • • • •		

JURY TRIAL  
BEFORE THE HONORABLE NORMA L. SHAPIRO  
SENIOR UNITED STATES DISTRICT COURT JUDGE  
THE HONORABLE M. FAITH ANGELL  
UNITED STATES MAGISTRATE JUDGE

- - -

APPEARANCES:

For the Plaintiff: ELLIOT B. PLATT, ESQUIRE  
Two Penn Center Plaza, Suite 1930  
1500 John F. Kennedy Boulevard  
Philadelphia, PA 19102

For the Defendants: ALAN B. EPSTEIN, ESQUIRE  
Spector Gadon & Rosen PC  
Seven Penn Center, Seventh Floor  
1635 Market Street  
Philadelphia, PA 19103

- - -

Audio Operators: James Beck  
Sandy Malloy

Transcribed by: Tracey J. Williams, CET

(Proceedings recorded by For the Record Gold digital sound recording; transcript produced by AAERT-certified transcriber.)

- - -

1                             (The following occurred in open court at 9:32  
2 o'clock a.m.:)

3                             JUDGE ANGELL: Good morning, your Honor.

4                             ALL: Good morning, your Honor.

5                             JUDGE ANGELL: You'll be happy to know I'm just  
6 covering for the morning. Okay.

7                             (Pause.)

8                             (Jury in at 9:33 o'clock a.m.)

9                             JUDGE ANGELL: Good morning, jurors. Please be  
10 seated. My name is Faith Angell and I'm a United States  
11 Magistrate Judge. I would like to poll you individually now.

12                             So, we'll start, Juror Number 1. May I know that  
13 you abided with Judge Shapiro's instructions not to discuss  
14 this case with anyone?

15                             JUROR NO. 1: Yes, did.

16                             JUDGE ANGELL: Juror Number 2, am I assured that you  
17 did not discuss this case with anyone last evening?

18                             JUROR NO. 2: I did not, your Honor.

19                             JUDGE ANGELL: Juror Number 3, I also wish to ask  
20 you, did you abide with Judge Shapiro's instructions and not  
21 discuss the case with family or friends?

22                             JUROR NO. 3: I did, your Honor.

23                             JUDGE ANGELL: Juror Number 4, I would like to know  
24 whether in fact you did not discuss this case with anybody,  
25 family or friends or anybody?

1                   JUROR NO. 4: I did not, your Honor.

2                   JUDGE ANGELL: Okay. Juror Number 5, good morning.

3                   I would like to know if in fact you abided with Judge  
4                   Shapiro's instructions and didn't discuss the case with  
5                   anyone?

6                   JUROR NO. 5: Yes.

7                   JUDGE ANGELL: Juror Number 6, I ask you also, did  
8                   you agree and abide with Judge Shapiro's instructions not to  
9                   discuss this case with anyone?

10                  JUROR NO. 6: Yes, your Honor.

11                  JUDGE ANGELL: Juror Number 7, good morning. I  
12                  would like to know from you that you in fact did not discuss  
13                  the case with family, friends or anyone?

14                  JUROR NO. 7: I did not.

15                  JUDGE ANGELL: Juror Number 8, I'd like to know from  
16                  you whether in fact you abided with Judge Shapiro's  
17                  instructions and did not discuss the case with anyone?

18                  JUROR NO. 8: Yes, I abided.

19                  JUDGE ANGELL: Juror Number 9, I would like to know  
20                  from you whether in fact you abided with Judge Shapiro's  
21                  instructions and did not discuss the case with anyone?

22                  JUROR NO. 9: I did, your Honor.

23                  JUDGE ANGELL: And, Juror Number 10, I'd like to  
24                  know from you whether in fact you abided with Judge Shapiro's  
25                  instructions and did not discuss the case with anyone?

1                   JUROR NO. 10: I did, your Honor.

2                   JUDGE ANGELL: Very good. Thank you very much.

3                   All right. Are you ready to go back and deliberate?

4                   THE JURY: Yes, your Honor.

5                   JUDGE ANGELL: Very good. Thank you.

6                   (Jury out at 9:35 o'clock a.m.)

7                   JUDGE ANGELL: I'm not sure when Judge Shapiro will  
8 be back, but it shouldn't be too long. Okay? Thank you.

9                   ALL: Thank you, your Honor.

10                  MR. EPSTEIN: Your Honor, may I discuss something  
11 with you unrelated to the case --

12                  JUDGE ANGELL: Sure.

13                  MR. EPSTEIN: -- in the hallway?

14                  JUDGE ANGELL: Oh, yes.

15                  (Court in recess; 9:36 to 4:09 o'clock p.m.)

16                  THE COURT: The jury has a verdict. I will have the  
17 foreman -- could we have the verdict form, please?

18                  THE DEPUTY CLERK: Sure.

19                  THE COURT: I'll have the foreman give me the  
20 answers and then I'll voir dire the jury on whether it's the  
21 -- I'll poll the jury, excuse me, on whether it's their -- a  
22 unanimous verdict and then I'll follow the usual orders about  
23 post-trial motions. I see I picked up a red pen, you're not  
24 to take any inference from that fact.

25                  Would you bring in the jury?

1 (Discussion held off the record.)

2 THE COURT: Of course I don't comment on the  
3 verdict, but it's my practice if the jury has any questions  
4 about court procedure or something I'll go back to the jury  
5 room and respond to that sort of question. In my experience,  
6 on a Friday afternoon there is never a juror who wants to  
7 stay, but it seems to me civil to make the offer.

8 (Pause.)

9 (Jury in at 4:12 o'clock p.m.)

10 THE COURT: Please be seated, members of the jury.  
11 My deputy has informed me that you have reached a verdict.

12 Could I have the verdict form, please?

13 (Pause.)

14                   THE COURT: Mr. Foreman, if you would respond? How  
15 did the jury find on Question 1, "Has Melissa Brown proved by  
16 a preponderance of the evidence that Nutrition Management  
17 Services was a successor in interest to her previous  
18 employer," yes or no?

19 THE JURY FOREPERSON: We answered, "Yes," your  
20 Honor.

21 THE COURT: Did you find that Melissa Brown proved  
22 by a preponderance of the evidence that Nutrition Management  
23 Services interfered with her rights under the Family and  
24 Medical Leave Act?

THE JURY FOREPERSON: We answered, "Yes."

1                 THE COURT: Did you find that -- by a preponderance  
2 of the evidence that Scott Murray occupied a position of  
3 control in Nutrition Management?

4                 THE JURY FOREPERSON: We answered, "Yes."

5                 THE COURT: Did you find that Melissa Brown proved  
6 that Scott Murray interfered with her rights under the Family  
7 and Medical Leave Act?

8                 THE JURY FOREPERSON: We had answered, "No."

9                 THE COURT: Did you find that Melissa Brown proved  
10 by a preponderance of the evidence that Karen Zywalewski  
11 occupied a position of control in Nutrition Management so  
12 that she could be liable under the Family and Medical Leave  
13 Act?

14                 THE JURY FOREPERSON: We answered, "Yes."

15                 THE COURT: Did you find by a preponderance of the  
16 evidence that Karen Zywalewski interfered with her rights  
17 under the Family and Medical Leave Act?

18                 THE JURY FOREPERSON: We answered, "No."

19                 THE COURT: In what amount, if any, has the  
20 plaintiff, Melissa Brown, proved by a preponderance of the  
21 evidence damages for lost wages or financial benefits from  
22 the time she was terminated until today as a result of her  
23 termination?

24                 THE JURY FOREPERSON: We answered, "\$74,000."

25                 MR. PLATT: Forgive me, your Honor, I didn't hear

1 that.

2 THE JURY FOREPERSON: \$74,000.

3 MR. PLATT: Thank you.

4 THE COURT: In what amount, if any, has she proved  
5 by a preponderance of the evidence damages for future lost  
6 wages or financial benefits as a result of her termination?

7 That's 8.

8 THE JURY FOREPERSON: That's 8? We answered, "Omit  
9 per Judge's instructions."

10 THE COURT: I can't hear you.

11 THE JURY FOREPERSON: "Omit per Judge's  
12 instructions."

13 THE COURT: Oh, all right.

14 (Laughter.)

15 THE COURT: 9, "By what amount has defendant proved  
16 by a preponderance of the evidence that the plaintiff's  
17 damages for past and future lost wages, if any, should be  
18 reduced for her failure to mitigate?"

19 THE JURY FOREPERSON: Zero, your Honor.

20 THE COURT: Question 10, "Do you find that Melissa  
21 Brown proved by a preponderance of the evidence that her  
22 pregnancy was a determinative factor when Nutrition  
23 Management Services terminated her employment?"

24 THE JURY FOREPERSON: The answer is, "No."

25 THE COURT: That ends your deliberations, is that

1       correct?

2                 THE JURY FOREPERSON: That's correct, your Honor.

3                 THE COURT: Juror Number 1, was that your verdict?

4                 JUROR NO. 1: Yes.

5                 THE COURT: On all the questions to which I asked.

6                 Juror Number 2, was that your verdict as well?

7                 JUROR NO. 2: Yes, it was, your Honor.

8                 THE COURT: Juror Number 3, Mr. Foreman, was that  
9        your personal verdict as well?

10                JUROR NO. 3: Yes, it was.

11                THE COURT: Juror Number 4, was that your verdict?

12                JUROR NO. 4: Yes, your Honor.

13                THE COURT: Juror Number 5?

14                JUROR NO. 5: Yes, your Honor.

15                THE COURT: Juror Number 6?

16                JUROR NO. 6: Yes, your Honor.

17                THE COURT: Juror Number 7?

18                JUROR NO. 7: Yes, your Honor.

19                THE COURT: Juror Number 8?

20                JUROR NO. 8: Yes, your Honor.

21                THE COURT: Juror Number 9?

22                JUROR NO. 9: Yes, your Honor.

23                THE COURT: And Juror Number 10?

24                JUROR NO. 10: Yes, your Honor.

25                THE COURT: Very well. That concludes your

1 deliberations and you have the thanks of the Court. It's not  
2 my role and I won't comment on the verdict except to thank  
3 you. You are now free to discuss the case with your family  
4 or friends or whomever, but when you do you should be more  
5 willing to discuss your personal thoughts than reveal the  
6 thoughts or feelings of your fellow jurors.

7           It's my practice, if you want to ask any questions  
8 not about the verdict but about the procedures or court  
9 practice, that I am willing to come back to the jury room and  
10 talk to you, but you don't -- you're free to leave, if you  
11 wish, you don't have to stay. I realize it's late on a  
12 Friday afternoon. I have to have a few words with the  
13 lawyers and then, if any of you have stayed, I'll be in.

14           Thank you. You are excused. Have a wonderful  
15 weekend.

16           (Jury excused at 4:18 o'clock p.m.)

17           THE COURT: We will have some matters to consider as  
18 a result of this, but I think it's premature just now. So,  
19 you will want to consider the issue of attorneys' fees and  
20 perhaps you could have some discussions about that, we might  
21 have to have briefings.

22           (Discussion held off the record.)

23           THE COURT: So, I'll be in touch with you.

24           MR. PLATT: Thank you, your Honor.

25           THE COURT: Thank you.

1                   MR. PLATT: Your Honor, I must confess that I'm  
2 somewhat confused about the answer to Number 8 where it said,  
3 "Omit per Judge's instructions."

4                   THE COURT: Well, I said, as I believe in my charge  
5 and I'll check, that they didn't have to award damages for  
6 future lost, it was in their discretion and I think that --

7                   MR. PLATT: Oh, all right, that's how we take it.

8                   THE COURT: -- I believe that's what they meant, not  
9 that I told them not to. That gave me pause for a minute  
10 too, but it's clear that they didn't award any.

11                  MR. PLATT: Yes.

12                  THE COURT: Mr. Epstein?

13                  MR. EPSTEIN: I have nothing, your Honor.

14                  THE COURT: All right. Well, you're free to go.  
15 I'm just waiting --

16                  MR. PLATT: Thank you, your Honor.

17                  THE COURT: -- to see if they wanted to --

18                  MR. EPSTEIN: Oh, okay.

19                  THE COURT: -- talk before I --

20                  MR. EPSTEIN: I thought you were going to be leaving  
21 the courtroom and I was getting up, your Honor.

22                  THE COURT: Ah, thank you. All right, I am. I'm  
23 leaving the courtroom, but where I'm going is what the  
24 question is.

25                  MR. EPSTEIN: Understood.

1 THE COURT: Thank you.

2 (Court adjourned at 4:20 o'clock p.m.)

3 \* \* \*

CERTIFICATION

I hereby certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter.

Geraldine C. Laws, CET  
Laws Transcription Service

Dated 11/25/08